IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision : December 14, 2007

E.A 341/2007, E.A 531/2007 & Ex.P. No.73/2005

Shri G.L. Didwania ..... Decree Holder
! Through: Mr.Sukumar Pattjoshi, Advocate.

Vs.

$ Minoo K. Bhagwagar ..... Judgment Debtor
^ Through: In person.

CORAM :-
*** HON'BLE MR. JUSTICE ANIL KUMAR**

1. Whether reporters of Local papers may be allowed to see the judgment? YES
2. To be referred to the reporter or not ? NO
3. Whether the judgment should be reported in the Digest? NO

ANIL KUMAR, J. (Oral)
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1. The decree holder filed this execution petition for execution of decree dated 11th October, 2004 for recovery of Rs.21,37,394.33 as principal plus Rs.9,73,729.67 as interest @ 3% per month from 22nd March, 2004 till the date of realization against the judgment debtor.

2. The objections being E.A 638/2006 were filed by the judgment debtor which were dismissed by order dated 11th May, 2007. In an appeal filed before the Division Bench against the decree being

RFA(OS) No.36/2007 and appeal filed against the dismissal of objections being EFA(O)S No.10/2007, a consent order was passed whereby the decree was modified and it was directed that interest shall be paid @ 18% per annum at simple rate on Rs.10.00 lakh which shall be calculated with effect from 23rd March, 2001. The amount of Rs.3.51 lakh paid by the judgment debtor before filing of the suit was adjusted and further amount of Rs.9.62 lakh was also to be adjusted first towards interest due. It was also agreed by the judgment debtor that the amount shall be paid by him by a demand draft and consequently a judgment and decree dated 11th October, 2004 in respect of which the above-noted execution petition is pending was modified. It was also agreed that the amount shall be paid before 30th July, 2007.

3. Pursuant to the decree modified by the order dated 29th May, 2007, a communication was sent on behalf of judgment debtor to the decree holder dated 15th June, 2007 that on the basis of computation arrived at pursuant to order dated 29th May, 2007, a sum of Rs.7,85,819.15 as the balance decreetal amount is due from the judgment debtor. The decree holder was asked to confirm the this amount so that the amount could be paid prior to 30th July, 2007. The details of calculations were also annexed and the notice.

4. Consequent thereto, a pay order/manager's cheque bearing No.029375 dated 26th June, 2007 for a sum of Rs.7,89,800/- drawn on HDFC Bank, Saket Branch was sent along with a communication dated 26th June, 2007 by registered post. The judgment debtor has produced the postal receipt dated 26th June, 2007 issued from Lajpat Nagar Post Office bearing registered article No.2342 and the acknowledgment card with the address of the decree holder as "Mr.G.L. Didwania, 173, Western Avenue, Sainik Farms, Khanpur, N. Delhi-110062" with the endorsement of receipt of registered article on 28th June, 2007.

5. The judgment debtor also contended in his communication dated 26th June, 2007 that in order to deliver the demand draft personally, the judgment debtor tried to contact Mr.Sukumar Pattjoshi, Advocate on record for the decree holder, to accept the same but he remained unavailable and the judgment debtor also tried to call the decree holder on mobile phone No.9811086400 but the decree holder could not be contacted as his wife told that the decree holder had left the cell phone at home. The judgment debtor also contended in his communication that he had tried to contact Mr.N.K. Jawahar, a common link between the decree holder and the judgment debtor, so that the decree holder could accept the payment but the said gentleman, Mr.Jawahar, had no instructions to accept the said

payment.

6. The matter came up before the Division Bench in RFA(OS) No.36/2007 and EFA(OS) No.10/2007 on 30th July, 2007 when the decree holder contended that he has not received the pay order and since an application was filed by the judgment debtor for recording the satisfaction of the decree being EA No.341/2007, the Division Bench by order dated 30th July, 2007 directed that the single Judge will record the satisfaction of the decree. The learned Division Bench passed the following order:-

> "CM Appl. Nos.10013-14/2007 in EFA(OS) No.10/2007 and RFA (OS) No.36/2007
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> Vide order dated 29.5.2007, judgment and decree dated 11.10.2004 passed by the learned Single Judge was modified. It was a consent order. As per the modified decree, payment was to be made by the appellant to the respondent within eight weeks. It is averred by the appellant that as per the modified decree, amount payable was Rs.7,89,800/- and pay order No.029375 dated 26.6.2007 issued by the HDFC Bank Limited, Saket Branch, New Delhi, was sent to the respondent by registered post. Therefore, prayer made is to treat the decree as satisfied. The respondent, who is present in the Court, states that he has not received the pay order so far. Since the appellant has also filed application before the learned Single Judge in the execution petition and it is the learned Single Judge who is to, in that petition, record satisfaction of the decree, it would be appropriate for the learned Single Judge to pass orders on the application filed by the appellant in this behalf. We dispose of these applications with the aforesaid directions.

7. On 21st August, 2007, the counsel for decree holder contended that he does not want to file any reply to EA No.341/2007 which was

filed by the judgment debtor to record the satisfaction of the decreetal amount in Suit No.CS(OS) No.440/2004 and consequent thereto execution petition being Ex. No.73/2005. The judgment debtor also sought time to produce the postal certificate to show that the registered article sent by the judgment debtor on 26th June, 2007 contending that the pay order/manager's cheque bearing No.029375 dated 26th June, 2007 drawn on HDFC Bank, Saket Branch, New Delhi for sum of Rs.7,89,800/- was delivered to the decree holder.

8. During the pendency of the execution petition, a statement was given by the judgment debtor on 15th June, 2006 that he would not be transferring his shareholding in M/s.Concept India Pvt. Ltd. and the immovable properties of the said company. As the decree holder had been contending that he had not received the draft and the communication dated 26th June, 2007, another application being EA No.531/2007 was filed to record the satisfaction of the decree and permit the judgment debtor to issue stop payment order to the issuing bank against pay order dated 029375 dated 26th June, 2007 for sum of Rs.7,89,800/- and for issuance of fresh pay order.

9. By order dated 22nd October, 2007, the judgment debtor was allowed to stop the payment of pay order dated 26th June, 2007 and permitted to obtain another draft and give the same to the decree

holder on the next date of hearing, i.e., 30th October, 2007. On 30th October, 2007, another draft obtained by the judgment debtor from the same bank for sum of Rs.7,89,800/- bearing No.031417 drawn on HDFC Bank Ltd. Dated 26th October, 2007 was given to the decree holder which was accepted by him without prejudice to his rights and contentions.

10. The judgment debtor also offered another sum of Rs.15,000/- in order to settle all the disputes though he had tendered the pay order along with the letter dated 26th June, 2007 which was served on the Decree holder on 28th June, 2007. According to him, the decree stood satisfied as he had sent the balance decreetal amount in compliance of the order of Division Bench within time and it was duly received by the decree holder. On 30th October, 2007 the counsel for the judgment debtor did not accept another draft of Rs.15,000/- which was offered by the judgment debtor without prejudice to his rights and contentions and sought time to take instructions from the Judgment Debtor.

11. On 12th November, 2007, the next date, the decree holder appeared in person and contended that he was unable to engage the counsel as he is unable to pay his fee and he sought time. Another amount of Rs.15,000/-, without prejudice to the rights and

contentions of the judgment debtor, was again offered which was declined by the decree holder.

12. Mr.Sukumar Pattjoshi, Advocate, again appeared on 30th November, 2007 who had been a counsel in the suit and in the execution petition and even before the Division Bench in the appeal and who was not discharged in the execution petition and he sought time on 30th November, 2007 on the ground that the decree holder is not well and the matter was adjourned to 7th December, 2007. On 7th December, 2007, another counsel, Mr.Rakesh Kumar Singh, appeared on behalf of decree holder and sought time as the counsel, Mr.Sukumar Pattajoshi, was stated to be busy in another court and, therefore, the decree holder was directed to be present in person on 14th December, 2007 and the matter was adjourned for that date.

13. Today an adjournment is again sought by the counsel for the decree holder which is declined. The presence of decree holder was directed to ascertain whether he is inclined to accept an additional amount offered by the judgment debtor or not. The learned counsel for decree holder states that he has no instructions about the acceptance of the additional amount offered by the judgment debtor.

14. Regarding the application of the judgment debtor to record

satisfaction of the decree as the amount had been tendered and received by the decree holder prior of 30th July, 2007, it is contended by the learned counsel for the decree holder that the amount was not received by the decree holder.

15. The decree holder has not filed any reply to the application being E.A 341 of 2007 seeking recording of satisfaction of the decree. In reply to E.A 531/2007 it is stated that the pay order has not been received by the decree holder. Except the bald statement made in the reply that the pay order was not received no such facts have been disclosed which will rebut the presumption of receipt of registered article as will arise under section 27 of General Clauses Act in the present facts and circumstances.

16. The letter dated 26th June, 2007 was addressed to "Mr.G.L. Didwania, 173, Western Avenue, Sainik Farms, Khanpur, N. Delhi-110062" which is the address of the decree holder. The learned counsel for the decree holder is unable to point out any such facts from the reply which will rebut the presumption of service of the registered article at the address of the decree holder. In the reply to application the fact that before sending the balance decreetal amount the judgment debtor had tried to contact decree holder and a common friend has not been specifically denied. The judgment debtor had

deposited the entire balance amount with the bank and had obtained a pay order for the said amount. There was no reason for the judgment debtor not to send the pay order as otherwise he would have become liable to pay the entire decreetal amount. The decree holder though has denied that he received the registered article but the postal certificate produced by the judgment debtor show that the registered article was delivered at the address it was sent which was of the decree holder. The decree holder has been unable to rebut the presumption of service which arises in the facts and circumstances. The Apex Court in *Harcharan Singh v. Shivrani, (1981) 2 SCC 535* , had held at page 542 :

> **7.** Section 27 of the General Clauses Act, 1897 deals with the topic— "Meaning of service by post" and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, *the service shall be deemed to be effected* by properly addressing, prepaying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus raises a presumption of *due service* or *proper service* if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more. Similar presumption is raised under illustration (*f*) to Section 114 of the Indian Evidence Act whereunder it is stated that the court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by prepaying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of

> the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise.

17. The judgment debtor with the permission of this court obtained another pay order and stopped the payment of earlier pay order which was sent to the decree holder and subsequent pay order was received by the decree holder without prejudice to his rights and contentions. The point for determination in the facts and circumstances is whether the decree holder received the pay order or not in compliance with the order of Division Bench prior to 30th July, 2007. Considering the various facts and the bald denial of the decree holder that he did not receive the pay order, it is apparent that the pay order which was sent as registered article with an accompanying letter was received by him in the facts and circumstances. Since the judgment debtor had already paid the amount to the concerned bank to obtain the pay order, there was no reason for him not to send the pay order and to risk paying the entire decreetal amount. The presumption which arises under clause 27 of General clauses act that the registered article was delivered at the address it was sent, has not been rebutted by the decree holder successfully. In the circumstances the inevitable inferences is that the judgment debtor had paid the balance decreetal amount by pay order to the decree holder and consequently the decree stood satisfied.

18. Consequently it is held that the decree has been satisfied as the judgment debtor has paid the amount in compliance with order dated 29th May, 2007 modifying the decree dated 11th October, 2004. Therefore, the applications being E.A 431 of 2007 and E.A 531 of 2007 seeking recording satisfaction of the decree passed against the judgment debtor are allowed and Execution petition of decree holder is disposed of as satisfied. All other pending applications are also disposed of. The judgment debtor is also discharged of his statement dated 15th September, 2006.

December 14, 2007 **ANIL KUMAR, J.**
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